

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,
Plaintiff,

-vs-

SHANE AURAND,
Defendant.

**PRE-SENTENCING MEMORANDUM SUBMITTED ON
BEHALF OF DEFENDANT
SHANE AURAND**

SUBMITTED BY:

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Posture of the Case

The defendant, Shane Aurand, is scheduled to be sentenced on June 26, 2018. Counsel for the defendant respectfully requests that the Court consider the information contained in this memorandum and the attachments thereto when determining Shane Aurand's sentence.

Biographical Information

(a) Childhood

On February 24, 1997, Shane Aurand was born to Heather Battaglia and Richard Aurand. Shane's parents began dating when Heather was only fifteen (15) years old and Richard was twenty-two (22) years old. As such, it is clear from the outset that Richard Aurand had questionable judgment. The two connected over their illicit drug use and their addiction formed the basis of their relationship. In addition to living with active drug addiction, Shane's parents lived with untreated mental health issues and often engaged in criminal acts to obtain their next fix. Three years after the two began dating, Shane was born.

It is clear that Shane was born to parents who were young, drug-addicted, and ill-equipped to raise a child. Both Heather and Richard were arrested on numerous occasions throughout Shane's childhood and were unable to provide Shane with the love, stability, and kindness that a child requires and deserves. These circumstances created the perfect breeding-ground for the dysfunctional and oftentimes traumatic childhood that Shane Aurand experienced.

For the first five (5) years of his life, Shane resided with his mother. Given his mother's drug addiction and untreated mental health issues, this arrangement did not last long. Shane's mother was inconsistent and overcome with her addiction. On more than one occasion while Shane was growing up, he witnessed his mother overdose on heroin. When Shane was approximately five (5) years old, he moved in with his maternal grandparents, Doreen and James Battaglia—who he would live with sporadically his entire life. While living with his

grandparents was an improvement for Shane, it was not perfect. Shane's grandfather worked as a truck driver and was not present in the household often. Moreover, his grandmother worked long hours, often holding down several jobs simply to keep the household afloat. As a result, Shane did not receive much love or attention and was left alone more often than not. As a child who was essentially abandoned by his parents, it was difficult for Shane to receive so little attention from his grandparents. Thus, early on, Shane's life was filled with feelings of loneliness, isolation, and abandonment.

For a period of time, Shane's mother conquered her addiction. Unfortunately, not long thereafter, she remarried. Shane recalls when his step-father entered his life and this was a difficult time. Shane's step-father was physically abusive towards Shane's mother and led her back to addiction. Shane recalls witnessing his mother being beaten and his step-father chasing his mother with a knife. While Shane has always wanted a father-figure in his life, he has been dealt one bad influence after another. Much like with his biological father, Shane had no true relationship with his step-father.

(b) Abuse

When Shane was approximately eleven (11) years old, for reasons unbeknownst to him, he moved to Tacoma, Washington to live with his father's side of the family. Unfortunately, this move proved to be an immensely detrimental event in Shane's young life. Shane soon became the victim of physical abuse at the hands of his father. To make matters worse, when Shane was just eleven (11) years old, his sixteen (16) year old cousin began sexually abusing him. This older cousin abused both Shane and Shane's younger cousin who was just eight (8) years old. He forced Shane to perform sexual acts on both himself and his younger cousin. While it is upsetting for Shane to discuss this abuse, he admits that the abuse was extensive, ongoing, and only stopped short of actual forcible penetration.

While Shane was young and had already experienced a difficult childhood, he knew that the sexual abuse he was experiencing was not right. As a result, Shane confided in his uncle (the perpetrator's father) about the abuse and asked for help—an extremely brave and difficult task for an eleven (11) year old child. Unfortunately, the dysfunction ran deep and when Shane confided in his uncle, he was told “that’s just what brothers do.” Still recognizing that something was amiss, Shane replied, “but I am not one of the brothers.” Shane’s family dismissed the abuse Shane was experiencing and did absolutely nothing to protect him from ongoing sexual and physical abuse. Shane was forced to suffer this abuse for the next two years. At that time, he informed his father.

When Shane was thirteen (13) years old, he moved back to Western New York to live with his maternal grandparents. Unfortunately, at that point, the years of instability as well as physical and sexual abuse had taken a toll on Shane. While Shane recalls his grandmother speaking to a detective about the abuse he suffered, he does not recall anyone being arrested for abusing him. Even more upsetting, Shane was never given help for the abuse he experienced. He never saw a medical doctor, counselor, or even talked about the abuse with his grandmother. He was essentially forced to suppress the feelings associated with his victimization and was never able to work through the abuse and its impact on him.

(c) Adolescence

Consequently, Shane struggled in school and often had trouble concentrating. Shane was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and was prescribed medication to help him focus in school. Given the lack of parental figures and love in his life, the physical and sexual abuse he experienced, and the overall neglectful nature of his childhood, Shane, unsurprisingly, struggled with behavior issues throughout his life. These issues presented themselves most predominately in the school setting where Shane also struggled academically.

Likely as a result of all the negative emotions Shane carried with him on a daily basis, Shane began turning to drugs to help him cope with his feelings. The drug use started when Shane was just thirteen (13) years old and began with marijuana. At that time, Shane chose to discontinue his ADHD medications because he believed they were negatively impacting his sleep. Shane soon found that consuming marijuana helped ease his difficulty concentrating and permitted him to sleep better at night. As a result, he began using marijuana on a daily basis as self-medication.

Shane went on to experiment with other drugs and admits that using drugs comforted him. It eased his loneliness and feelings of isolation, it helped him minimize the thoughts of his abuse, and it provided him with something to do when he was bored. Shane was using drugs to fill all the voids in his life. He looked to drugs as a friend to confide in to ease his loneliness; he looked to drugs to ease the impact of the abuse he experienced and to deal with negative emotions; and he used drugs as a source of entertainment.

Shane attended Little Valley Schools until eight grade. At that time, Shane was designated a person in need of supervision (PINS) by the local Family Court. In addition, he was sent to Randolph Academy—a school for troubled youth. Shane continued to struggle even at Randolph Academy. He recalls a teacher at the school who would physically abuse the students and this was another reason Shane struggled in school. Unable to cope and struggling with behavior and academic issues, Shane eventually dropped out of school in eleventh grade.

(d) Employment Background

Upon leaving school, Shane resided with his mother and obtained local employment splitting wood. In 2015, he was hired at Family Dollar in Gowanda as a cashier. Then in 2016, he worked at the local Kentucky Fried Chicken (KFC) as a full-time, morning cook. Most recently, Shane worked at Iroquois Smoke Shop as a gas station cashier.

(e) Significant Other

In 2015, Shane met his significant other and future mother of his child, Shania. The two first met online and immediately hit it off. The two eventually realized that they had similar childhoods, and they bonded over the trauma that they had both experienced growing up. For the first time in Shane's life, he was able to open and honest with someone about his struggles. Shania eventually moved from her home in Alabama to live with Shane in Western New York. Immediately, Shania had a positive impact on Shane who was inspired by Shania's motivation and drive to succeed. In respect of Shania's wishes, Shania discontinued his drug use, and maintained steady employment to support their household. The two fell in love and began planning a life together.

(f) Fatherhood

On February 1, 2017, Shane and Shania welcomed their first child, Skylee, into the world. Having experienced the loss of their first pregnancy, Shane and Shania were overjoyed upon Skylee's arrival and wanted to be great parents to their bundle of joy. Shane's blissful entrance to parenthood did not last long as he was arrested for the instant case just six (6) weeks following Skylee's birth.

Shane has remained incarcerated since his arrest in March 2017. As a result, he has not had the opportunity to watch his daughter grow up. He has missed Skylee's first smile, her first words, and has missed out on watching her personality develop. Moreover, Shane must accept the reality that he is inevitably going to miss out on Skylee's childhood. As a young man who came from a dysfunctional and broken home, it is devastating for Shane to know that his daughter will not have a father in her life full-time. Missing out on so much has forced Shane to understand that his actions directly impact not only his life, but his family members' lives as well. Shane is overwhelmed with remorse and shame, but is determined to make amends for his

actions.

(g) Current Family Status

As mentioned above, Shane is currently incarcerated pending sentencing in this matter. During this time, Shane has been thankful for the support of his fiancé who cares for their daughter, as well as his mother and grandmother. After a lifetime of struggling with addiction, Shane's mother is in active recovery and maintains two jobs. Shane's mother and grandmother have done everything within their power to support Shane through this ordeal. They visit with him every Tuesday and this has meant the world to Shane.

While it has taken a lifetime for Shane to feel the support and love of his family, this terrible situation has shown him that his mother, grandmother, and fiancé are all in his corner. Shane's grandmother even sold her automobile in order to pay for a forensic evaluation by renowned Dr. David Heffler. Shane is thankful for this support, but one cannot help but wonder if he had received such support growing up if he would still have found himself before this court.

Criminal Record

Shane Aurand has absolutely no criminal record whatsoever. The instant charges, while heinous, are more a product of Shane's upbringing than they are a reflection of who Shane Aurand is as a person. Shane is a young man who was victimized his entire life. A young man who often yearned for the love and support of family, but never received it. Shane is a young man who felt isolated and distrustful of people his entire life because nearly every person he interacted with victimized or took advantage of him in some way.

Growing up, Shane was never shown what unconditional love looks like. Moreover, he was never taught the appropriate way to navigate life generally. All of his familial relationships were destructive at worst and neglectful at best. As a result of this upbringing, or lack thereof, Shane was forced to develop unhealthy and often destructive coping mechanisms all without the

guidance of what is acceptable and what is not. This perfect storm of neglect, abuse, and untreated mental health concerns have resulted in the man that stands before this court desperate to understand his own demons and dedicated to making amends somehow.

Forensic Evaluation

Beginning in June 2017, Shane underwent a sexual offender risk assessment with Dr. David Heffler. The purpose of this evaluation was to assess Mr. Zaifert's emotional functioning and his risk of recidivism. Doctor Heffler's report is attached at **Exhibit A**. When reading Dr. Heffler's report, it is astoundingly clear that Shane's harmful upbringing and the abuse he suffered throughout his life has strongly influenced the man that Shane Aurand has become. According to Dr. Heffler, "[e]arly life trauma, particularly chronic early life trauma, is relevant in the formation of his noted enduring personality disturbances and pathological personality traits; which likely played a role in his offense specific behavior." **Exhibit A** at page 21 ¶ 1.

Dr. Heffler went on to recognize that "Mr. Aurand's psychosexual history is replete with events and incidents which laid the groundwork for his sexual disorders." **Exhibit A** at page 21 ¶ 3. Dr. Heffler explains in his report that individuals who are victims of sexual abuse at a young age "will sexually imprint at that developmental level and subsequently become fixated . . . with children in that or similar age ranges." **Exhibit A** at page 21 ¶ 3.

Notwithstanding the fact that Shane was essentially raised in an atmosphere that led him directly to this court, he is not a person who is without hope. Dr. Heffler recognized that Shane "exhibit[s] a capacity for victim specific empathy and remorse." **Exhibit A** at page 16 ¶ 3. Moreover, Shane "assumed unqualified responsibility for his offense and did not place blame on others or minimize the seriousness of his actions." **Exhibit A** at page 20 ¶ 6.

During the assessment, Shane voluntarily expressed his understanding that he has a deep-

rooted problem and that he needs and wants help to overcome it. **Exhibit A** at pages 13-14.

Shane is fully cognizant of the immense damage he has caused as a result of this case. Shane is remorseful and wants nothing more than to get the help he needs to “get this stuff out of [his] head.”

Shane’s family as well as his counsel quickly noticed a change in Shane’s demeanor when he was undergoing the assessment with Dr. Heffler. Shane relished the opportunity to discuss his problems with someone who is trained in this field and who is equipped to provide treatment. For the first time in Shane’s life, he realized the benefits that could be realized through treatment. Unfortunately, given the cost of Mr. Heffler’s services, Shane and his family are unable to maintain this therapeutic relationship. Shane also expressed a desire to seek out treatment programs while incarcerated; however, he has been unable to do so because he is in a restricted wing of the jail.

Plans for Future

While Shane is struggling with the realization that his life will never be the same, he is hopeful that he can take all of the negativity he has caused and turn it into a positive outcome. Shane understands that he faces incarceration and while he is terrified at the prospect of being incarcerated and away from his family, he plans to make the best out of any sentence the court imposes. Shane is dedicated to seeking out every possible treatment option available and knows that the mistakes he has made are not who he is. Shane is confident that with the love and support of his family, and more importantly, with professional help, he can work towards understanding and overcoming the many mental health issues he suffers from. He hopes that, someday, he will be able to earn back the trust he has lost and once again play a role in his daughter’s life.

Conclusion

Counsel for Mr. Aurand thanks the court for considering the contents of this memorandum in deciding the sentence to impose in this matter.

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